

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

ARTHUR L. CLARK, et al.,
Plaintiffs

V.

LYNNE BOSCHER, et al.,
Defendants.

CIVIL ACTION NO. 05-30163-MAP

DEFENDANTS' MOTION TO DISMISS

The Defendants in the above-captioned action (collectively, the “City of Westfield”) move this Court, pursuant to the Federal Rules of Civil Procedure, to dismiss the Plaintiffs’ Complaint. The grounds for this motion, as more fully set forth in the accompanying memorandum, are summarized as follows:

A. The Plaintiffs’ claims are not properly before this court because ordinary land use disputes do not give rise to federal claims. The Plaintiffs seek compensatory and exemplary relief based on the City of Westfield’s decision to deny their subdivision application. Federal courts “do not sit as a super zoning board or a zoning board of appeals.” Raskiewicz v. Town of New Boston, 754 F.2d 38, 44 (1st Cir. 1985). “[W]here, as here, the state offers a panoply of administrative and judicial remedies, litigants may not ordinarily obtain federal court review of local zoning and planning disputes by means of 42 U.S.C. § 1983.” Id. The Complaint should be dismissed because the Plaintiffs’ claim constitutes a local land use issue, not a federal constitutional question.

B. This Court should refrain from hearing this case, pursuant to the doctrine of Younger abstention, because the plaintiffs' claims are currently pending in state court. The Plaintiffs initiated three lawsuits in Massachusetts state courts -- one of which was dismissed, and two of which are still pending -- as a result of the City of Westfield's denial of their subdivision application. The factual and legal issues raised by Plaintiffs' Complaint are currently before the Land Court Department of the Trial Court of Massachusetts. Because Plaintiffs' claims are currently in litigation and involve important state interests, this court should apply the Younger abstention doctrine and refrain from hearing this case.

WHEREFORE, the Defendants hereby request that the Court dismiss the Plaintiffs' Complaint.

LYNNE BOSCHER, PHILIP McEWAN,
KEVIN BOWLER, ANTHONY
PETRUCCELLI, RANDALL RACINE,
JOHN WYSOCKI, WILLIAM ONYSKI
and ANDREW DENARDO Individually and
as MEMBERS OF THE WESTFIELD
PLANNING BOARD DURING 2003,
JOHN SULLIVAN, RONALD COLE and
THOMAS FLAHERTY Individually and as
WESTFIELD SEWER COMMISSIONERS
DURING 2002, JANA CANTUCCIO,
JOSEPH SPAGNOLI and LEE PEREZ,
Individually and as WESTFIELD WATER
COMMISSIONERS DURING 2002,
RICHARD K. SULLIVAN, Individually and
as MAYOR OF THE CITY OF
WESTFIELD and CHARLES MEDEIROS,
BARBARA SWORDS, ADAM LIPTAK,
JR., DAVID BANNISH, BRENT BEAN,
BRIAN SULLIVAN, CHRISTOPHER
CREAN, JAMES CASEY, MARTIN
CANTY, DANIEL KNAPIK AND
CHRISTOPHER KEEFE, Individually and
as MEMBERS OF THE WESTFIELD CITY
COUNCIL DURING 2003,

By their attorneys,

/s/ Kenneth C. Pickering

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Dated: December 19, 2005

CERTIFICATE OF SERVICE

I, Kenneth C. Pickering, hereby certify that I have this day served a copy of the foregoing document, by mailing a copy, via overnight mail, postage prepaid, to William J. Pudlo, Esq. P.O. Box 676, West Springfield, MA 01090.

/s/ Kenneth C. Pickering

Dated: December 19, 2005

Kenneth C. Pickering

